

## Deschutes TMDL & Litigation

### Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington.

The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015<sup>1</sup>. The TMDL addresses 73 Water Quality Limited Segments (WQLS) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment).

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

### Litigation

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The case is now fully briefed and we are awaiting the court's reply, which will either grant ~~out our~~ request to stay the case until June 29, or render a summary judgement that EPA must act by June 29.

### Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove a TMDL, we are required to develop a replacement TMDL within 30 days. (b) (5)

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(b) (5)

### Next Steps

A briefing on the proposed TMDL decisions for the RA is currently scheduled for May 21<sup>st</sup>. Following that briefing, the Region will coordinate with HQ OWOW staff on background/briefing materials for AAOW.

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